

Order entered October 2, 2018



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00098-CR

JAMES BERKELEY HARBIN II, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F91-22107-Q

ORDER

Appellant's brief was initially due May 26, 2018. The Court granted two extensions of time, making the due date August 7, 2018. When a brief was not filed, we notified appellant by postcard dated September 14th and instructed him to file his brief and a motion for extension of time by September 24th. We cautioned appellant that the failure to do so would result in the appeal being abated for a hearing. To date, no brief has been filed, and we have had no correspondence from appellant.

Therefore, we **ORDER** the trial court to conduct a hearing to determine why appellant's brief has not been filed. In this regard, the trial court shall make appropriate findings and recommendations and determine whether appellant desires to prosecute this appeal or whether appellant has abandoned the appeal. *See* TEX. R. APP. P. 38.8(b). If the trial court cannot obtain

appellant's presence at the hearing, the trial court shall conduct the hearing in appellant's absence. *See Meza v. State*, 742 S.W.2d 708 (Tex. App.–Corpus Christi 1987, no pet.) (per curiam). If appellant is indigent, the trial court is **ORDERED** to take such measures as may be necessary to assure effective representation, which may include appointment of new counsel.

We **ORDER** the trial court to transmit a record of the proceedings, which shall include written findings and recommendations, to this Court within **THIRTY DAYS** of the date of this order.

We **DIRECT** the Clerk to send a copy of this order to the Honorable Tammy Kemp, Presiding Judge, 204th Judicial District Court; to counsel Lawrence B. Mitchell; and to the Dallas County District Attorney.

This appeal is **ABATED** to allow the trial court to comply with the above order. The appeal shall be reinstated thirty days from the date of this order or when the findings are received, whichever is earlier.

/s/ LANA MYERS
JUSTICE